

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

CHARLES C. BOSARGE

PLAINTIFF

V.

CIVIL ACTION NO. 3:11cv333 CWR-FKB

**MISSISSIPPI BUREAU OF NARCOTICS;
CAL REYNOLDS; ERIC FULTON; and
JOHN DOES 1-10**

DEFENDANTS

**MEMORANDUM IN SUPPORT
OF PLAINTIFF'S MOTION FOR LEAVE TO FILE
FIRST AMENDED AND SUPPLEMENTAL COMPLAINT**

Plaintiff, Charles C. Bosarge, hereby submits his Memorandum Brief in support of his Motion for Leave to File First Amended and Supplemental Complaint.

The proposed First Amended and Supplemental Complaint is offered to (1) correct the spelling of the first name of Defendant Reynolds from "Cal" to "Kyle," (2) confirm that the Mississippi Bureau of Narcotics is sued only for purposes of the state law claim, (3) delete the claim brought under 42 U.S.C. 1985, (4) set forth the federal jurisdictional basis in this Court (since the case originally was filed in state court and removed), (5) correct some typographical errors and delete extra words, (6) change wording in certain instances for clarity and stylistic reasons, (7) change the order of some paragraphs, (8) clarify that the Plaintiff's claim is not based on grand jury or detention hearing testimony of the individual defendants or preparation for that testimony, (9) clarify the Plaintiff's allegation that the Defendants' actions taint the grand jury indictment and the detention hearings such that those matters do not break the chain of causation, (10) add more specifics in response to the Defendants' contention that the complaint is insufficient and should be dismissed, and (11)

add some supplemental material stemming from the affidavits filed by Defendants Fulton and Reynolds in this case.

Fed. R. Civ. Proc. 15(a) provides that leave to amend “shall be freely given when justice so requires.” The various purposes of this amendment are all proper reasons for amending a complaint. In particular, it is appropriate for the Court to allow the amendment of a complaint in order to respond to defense contentions in a Rule 12 motion that the allegations of the original complaint are insufficient. *See, Auster Oil & Gas, Inc. v. Stream*, 764 F. 2d 381, 391-392 (5th Cir. 1985) (reversing denial of leave to amend where the plaintiff “endeavored chiefly to correct any flaws in its original statement of its claims” and where the defendant was not prejudiced). Indeed, many of the changes in the proposed amended complaint are being made to clarify matters in light of the Defendants’ arguments about the nature of the Plaintiff’s claims. Also, some of the changes address the Supreme Court’s recent decision in *Rehberg v. Paulk*, 132 S.Ct. 1497 (2012) and confirm that this lawsuit is not barred by *Rehberg*.

In the recent supplemental memorandum in response to the Defendants’ Rule 12 motion, the Plaintiff explained why the Defendants’ motion for judgment on the pleadings should be denied. But to the extent the Defendants’ argument had any merit, the allegations in the attached amended complaint are sufficiently detailed in order to survive the Defendants’ motion.

Accordingly, leave to file the first amended and supplemental complaint should be granted.

RESPECTFULLY SUBMITTED this the 22nd day of May, 2012.

**CHARLES C. BOSARGE,
PLAINTIFF**

BY: s/ Graham P. Carner
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CERTIFICATE OF SERVICE

I, Graham P. Carner, do hereby certify that I served a true and correct copy of the above and foregoing document by electronically filing same in accordance with this Court's electronic filing procedures, resulting in notice to the following:

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So certified this the 22nd day of May, 2012.

s/ Graham P. Carner
GRAHAM P. CARNER